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An early process evaluation of the Public Law Outline in family courts

Patricia Jessiman, Peter Keogh and Julia Brophy

Ministry of Justice Research Series 10/09
July 2009

An early process evaluation of the Public Law Outline in family courts

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First Published 2009

ISBN: 978-1-84099-297-7

Acknowledgements

We are grateful to Jagbir Jhutti-Johal, Lesley Scanlan, Margaret Robinson and Julie Doughty, all of the Centre for Family Law and Policy, and to Charlie Owen of the Thomas Coram Research Unit for their work in quantitative data collection and analysis for this report.

We would also like to express thanks to staff within the courts and local authorities, and advocates, who took part in interviews and focus groups, as well as the families who allowed us to observe court hearings. Thanks are also due to all those who supported us in accessing case bundles for the quantitative element of the study. The Association of Lawyers for Children supported us in reaching advocates to participate in the study. Members of the PLO Implementation Steering Group and Ministry of Justice staff provided helpful comments on early drafts of this report

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1. Research Summary

Context

Local authorities with serious allegations of significant harm or likely significant harm to a child which cannot be resolved with a parent may apply to the court to place the child under local authority care or supervision, under Section 31 of the Children Act 1989. Care proceedings resulting from such applications can be very lengthy. The Public Law Outline (PLO) was introduced by the Judiciary and Ministry of Justice as a tool for the management of care proceeding cases (Ministry of Justice 2008).

The aims of this study were to describe and evaluate the process of implementation of the Public Law Outline (PLO) in two tiers of the family justice system (magistrates' Family Proceedings Courts and county court Care Centres). The PLO was initially trialled in ten areas in England and Wales from June 2007, and rolled out nationally on the 1st April 2008, together with the issue of statutory guidance for local authorities issued by the Department for Children, Schools and Families (DCSF 2008), and the Welsh Assembly Government (WAG 2008).

The study had two objectives:

- To gain an understanding of the process of implementing the PLO and its impact from a range of practitioner perspectives.
- To determine the extent to which the PLO and the statutory guidance are being implemented in the planning and management of section 31 applications for care orders in three initiative areas.

Approach

This study used a mixed-method (quantitative and qualitative) approach to focus on three geographical areas in which the PLO was trialled from 2007 onwards. It consisted of three components carried out simultaneously between November 2008 and March 2009:

- A quantitative investigation of 53 case bundles from three court circuits exploring practices and compliance at each of four stages of the PLO.
- In-depth individual and group interviews with 72 key practitioners to elucidate practitioners' views and experiences of implementing the key stages of the PLO.
- Observations of 16 key hearings (Case Management Conferences, Interim Hearings and Issues Resolution Hearings) in courts in the three areas.

The case bundle analysis drew on a small sample of mostly completed cases from an early stage of PLO implementation, and the results should be viewed as indicative only and not as representative of PLO cases in general. Local authorities participating in the initiative

areas did not have a statutory obligation to comply with PLO guidance until 1 April 2008 but were simply volunteering to trial the new procedures. In this sense our capacity to measure 'compliance' is limited.

All of the respondents in the qualitative study were assured of anonymity and no quotes are used in this report, nor shared with the MOJ.

Results

The application of the PLO by the judiciary, including magistrates and legal advisers, varied. Some were inflexible in its application to the possible detriment to the case. Like any tool, the PLO's efficacy is entirely dependent on the skill with which it is used. Skilful application includes understanding when the needs of the case require departure from the PLO timetable. Less skilful application would appear to lie in inflexible adherence to the timetable.

When implemented appropriately to the needs of the case, the PLO provides a clear structure for s.31 cases, and clear expectations on those involved, which was welcomed by all practitioners. Without exception all respondents welcomed the aims of focusing on more efficient use of court time, and avoiding delay for children.

Most interview respondents were not of the view that the case duration had been affected by the implementation of the PLO and felt that cases were still in the main falling outside the 40-week Public Service Agreement target. However, while the majority of cases in the quantitative sample required more than the four main hearings outlined in the PLO and relatively few held the Case Management Conference or the Issues Resolution Hearing within the timescales specified by the PLO, most cases in this sample (70%) were completed within 40 weeks. (Bear in mind that the focus on completed cases may have resulted in the sample being biased towards shorter cases.)

There was concern that the PLO (amongst other factors) was not enhancing parents' capacity to benefit from legal advice and interventions prior to proceedings and during the early stages of proceedings. Moreover, concerns were expressed that the PLO might not be preventing cases coming to court. These concerns warrant further investigation.

Wide variability existed across local authorities with regard to adherence to the Pre-proceedings Checklist and compliance with court directions. Poor local authority compliance throughout proceedings was a key cause of delay (though the underlying reasons were beyond the parameters of the current study). There was also widespread perception that the 'front loading' of work onto the local authority had resulted in an increased workload during the pre-proceedings process. Respondents were particularly concerned that this might encourage unnecessary and harmful delay before issuing s.31 proceedings.

In two of the three areas (both in England), there was significant delay in the appointment of a children's guardian and their absence at the start of proceedings was of concern to many, particularly because cases were progressing without the welfare input from a guardian. However, early and staged reporting by guardians was welcomed.

Adjournments were frequent at both Case Management Conferences and Issues Resolution Hearings. The judiciary were taking steps to address adjournments that were not appropriate for the needs of the case in each of the three areas. Lack of availability of information, including from experts, police, medical agencies and the local authority was identified as a key source of delay.

Implications

In the interpretation of these findings, readers should note that the implementation of the PLO coincided with a period of change in policy and practice (the introduction of new fee systems for local authorities and advocates) as well as pressure on the courts and local authorities as a result of the 'Baby P' case. The PLO requires more time to 'bed down', before a thorough evaluation of its efficacy becomes practicable.

Further work is required to improve the timing of disclosure of information from partners including local authorities, expert witnesses, police and medical agencies.

The pre-proceedings process is in need of review to maximise the efficacy of the process in preventing cases coming to court; reduce any potential delays in issuing proceedings where these are necessary; improve access to and take-up of effective legal advice for both parents and children; and ensure the welfare, voice and human rights of the child are upheld during the pre-proceedings process.

2. Background and policy context

Introduction

Care proceedings cases, where a local authority¹ is seeking an order from the family courts to promote the welfare of a child under the Children Act 1989, are usually complex and dynamic, concerning families with multiple problems. Mental health problems, substance or alcohol abuse, and/or involvement with crime are often compounded by poverty and violent or acrimonious relationships between parents (Masson *et al.* 2008).

The Public Law Outline (PLO) (April 2008) was introduced jointly by the Judiciary and the Ministry of Justice (MOJ) as part of ongoing efforts to improve care proceedings. It is contained within a Practice Direction for management of Section 31 of the Children Act 1989 cases (s.31 cases) (Ministry of Justice, 2008). Section 31 is concerned with care and supervision orders².

The task of the court is to establish the facts, determine the need for any additional information, decide whether the threshold for significant harm has been met, and decide on the disposal of the case.

The PLO outlines the different stages through which cases should proceed and the activities that should occur at each stage. It is guidance to be applied to s.31 cases under the overriding objective of enabling the court to deal with cases justly, having regard to the welfare issues involved. This report evaluates early implementation of the PLO in three initiative areas to inform work to help embed the PLO nationally.

Background

The duration of complex, and often evolving, care proceeding cases has been a concern of Government since the mid 1990s. In 1996 the Booth Report (Booth, 1996) concluded that while the Children Act 1989 legislation was sound, there were problems in the way in which the Act and Rules operated. The report highlighted problems with reporting, administration, judicial case management, partnership working and timetabling of cases. A scoping study on delay in these cases (Lord Chancellor's Department³, 2002) also identified: problems in judicial case management, shortages of experts and insufficient partnership working between agencies, along with institutional factors within social services and courts administration.

1 Other authorised bodies can also seek court orders though in practice this is rare.

2 The Children Act 1989 states that a court may only make a care order or supervision order if it is satisfied:

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to:
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child's being beyond parental control.

3 Now the Ministry of Justice.

In 2005, the Department for Constitutional Affairs (DCA) (now Ministry of Justice) and other government departments undertook a programme of work reviewing the childcare proceedings system in England and Wales (hereafter referred to as 'the Review') (Department for Constitutional Affairs (DCA), Department for Education and Skills, and the Welsh Assembly Government, 2006). The Review was informed by an independent review of research on care and related proceedings (Brophy, 2006), and took place in the context of a number of related initiatives. Of particular importance was the DCA's Public Service Agreement programme on reducing delay in public law care cases, and in addition a judicial initiative was underway aimed at optimising the use of judicial resources. Finally, the development of the Protocol for Judicial Case Management in Public Law Children Cases (the forerunner of the current PLO), was ongoing (Lord Chancellor's Department, 2003).

The PLO is supported by statutory guidance for local authorities issued by the Department for Children, Schools and Families (DCSF, 2008), and the Welsh Assembly Government (WAG, 2008). The PLO and the statutory guidance are the two key reforms arising from the Review. Taken together, these documents outline the steps that should be taken by the local authority before issuing s.31 proceedings. This includes the requirement that when the local authority decides to apply for a care or supervision order (and emergency proceedings are not required), parents should be sent a 'Letter before Proceedings'⁴, outlining the authority's key concerns. The letter also invites those parents, along with their legal representative, to a meeting to agree actions to safeguard the child that might avoid the case coming to court. If this meeting is unsuccessful and no agreement is reached, the local authority will issue s.31 proceedings.

The *Protocol for Judicial Case Management in Public Law Children Act cases* (Lord Chancellor's Department, 2003) consisted of six stages; the PLO reduced these to four. The PLO specifies those documents that, where appropriate/possible, should be prepared by the local authority and filed with the court at Issue⁵ and in time for the first court appointment.

The four stages outlined in the PLO are summarised below but for a fuller account please refer to Appendix 1.

1. Issue and First Appointment: to allocate the case (to either a Family Proceedings Court (FPC) (magistrates' court) or a county court Care Centre (CC)) and give initial case management directions. On Issue the court should also ensure that a guardian is allocated for the child, and at First Appointment confirm a Timetable for the Child that takes into account key occurrences in the child's life likely to occur during the proceedings, and set the date for the Case Management Conference. The First Appointment should take place no later than six days after proceedings are issued.

4 For a fuller definition of this and other terms associated with care proceedings, an abridged version of the glossary included as part of *The Public Law Outline Guide to Case Management in Public Law Proceedings* is included in Appendix 2.

5 That is, the point at which a s.31 application is lodged with the court.

2. Advocates' Meeting and Case Management Conference: Advocates representing all parties in the case should meet to discuss a Draft Case Management Order, which outlines the Key Issues in the case, and if appropriate identify the expert evidence required to resolve them. This Draft Case Management Order will be considered by the court at the Case Management Conference (CMC) which should occur no later than 45 days after Issue. At this point the court will identify the issues and give full case management directions.

3. Advocates' Meeting and Issues Resolution Hearing: Advocates will meet to discuss returned expert evidence (where applicable), consider all other parties' case summaries and update the Case Management Order accordingly. The court will then use the Issues Resolution Hearing (IRH) to resolve and narrow issue(s); to identify any remaining Key Issues, review and update the Timetable for the Child, give further directions, and list the Final Hearing accordingly. The IRH should take place between 16 and 25 weeks after Issue.

4. Final Hearing: This is the point at which the court will determine any remaining issues, and decide on the disposal of the case.

Elements of the PLO were trialled in ten initiative areas in England and Wales from June 2007, and the PLO was rolled out nationally on 1 April 2008. It was supported by the statutory guidance for local authorities which was also introduced nationally from 1 April 2008 (DCSF, 2008; WAG, 2008). Prior to this, local authorities were not subject to the same obligations.

The PLO has the overriding objective of enabling the court to deal with cases justly, having regard to the welfare issues involved. It states that 'dealing with a case justly includes, so far as is practicable; ensuring it is dealt with expeditiously and fairly; dealing with the case in ways that are proportionate to the nature, importance and complexity of the issues; ensuring parties are on an equal footing; saving expense; and allotting to it an appropriate share of the court's resources while taking into account the need to allocate resources to other cases.' (MOJ, 2008, p. 1)

This report presents the results of an early process evaluation of the PLO, the aim of which is not to determine whether or not the PLO 'works' but to describe how well it is being used in three of the initiative areas. The remit set by the MOJ stipulated a focus on process, that is, the extent to which the management of the case 'fits' with the PLO stages. Therefore in our analysis of court bundles our primary focus is not on the content of cases⁶, but on the timing of events.

As with most evaluations of public policy other issues within the broader policy framework influence respondents' views about the subject being studied. These issues play an

6 See Masson *et al.*, 2008.

important role in understanding the impact of policy change in the real world (Patton, 2002). For respondents in this study, two issues were recurrent in discussions about the PLO. The first concerns fees and respondents had several concerns; the impact of a movement from an hourly to a fixed rate charge for much of solicitors' childcare work and thus their capacity to do the work; proposed changes to advocacy rates (Family Legal Aid Fund from 2010), and the (low) level at which the fee for pre-proceedings advice work has been set. These issues (which have been the subject of government consultations) were perceived to have a detrimental impact on the capacity of experienced childcare lawyers to undertake work both pre- and during proceedings. The second disturbance in the policy framework was the assignment of the full cost of proceedings to the local authority.

The full impact of one or both of these issues is not within the remit of this study and requires further exploration elsewhere. Moreover, the PLO requires more time to 'bed down', before a thorough evaluation of its efficacy becomes practicable.

Focusing on initiative areas means we have investigated courts where aspects of the PLO have been in operation longer and where there was likely to have been stronger leadership around its implementation by senior judiciary. We describe and evaluate the process of implementation of the PLO Guidance in two tiers of the family justice system (FPCs and CCs). The two objectives of the study were:

- To gain an understanding of the process of implementing the PLO and its impact from a range of practitioner perspectives.
- To determine the extent to which the PLO and the statutory guidance are being implemented in the planning and management of s.31 applications for care orders in three initiative areas.

3. Approach

This study focused on PLO cases in three initiative areas (that is, where aspects of the PLO were trialled from summer 2007 onwards) selected by the Ministry of Justice (MOJ). The areas consisted of individual county court Care Centres and a selection of their associated Magistrates' Family Proceedings Courts (also chosen by the MOJ). Areas in both England and Wales were included to gain the perspective of both jurisdictions. The courts in these areas have a high volume of cases with a range of issues, and are likely to have had more firmly established professional practices relating to the PLO (with local variations to standard practices in place).

The study consisted of three components carried out simultaneously between November 2008 and March 2009:

- A quantitative analysis of 53 case bundles from three court circuits to explore practice and compliance at the four stages of the PLO.
- In-depth individual and group interviews with 72 practitioners in the three areas to explore their views and experiences of implementing the PLO.
- Observations of 16 hearings (Case Management Conferences, Interim Hearings and Issues Resolution Hearings) in courts in the three areas.

The case bundle analysis drew on a small sample of cases from an early stage of PLO implementation, and the results should be viewed as indicative only and not as representative of PLO cases in general. Using a mixed-method approach allows us to examine compliance and outcomes quantitatively while exploring qualitatively the practices and imperatives influencing compliance. It also allows us to explore differences between practices (as evidenced by court bundles) and the perceptions of key players (for example, with respect to case duration).

Quantitative methods

The quantitative work involved a review of court bundles. These are lever-arched files of case documents prepared by the local authority applicant for the judge. They contain an index; and all the documents in a case (applications, case management documents, orders, directions, reasons/judgments, statements and reports) filed under headings in chronological order. In most respects county court case bundles are a more efficient and reliable format from which to extract information compared with county court files. However, for a comprehensive picture of cases, and for certain types of information, it is necessary to see both. Bundles are usually much better organised than most files, especially in complex cases where there is a significant amount of evidence. However, bundles can be incomplete at the end of cases lacking a copy of the final order. It is the responsibility of the local authority to provide and maintain bundles. They are not retained by the court between hearings or at the end of the case.

The initial remit specified a random sample of 75 cases. However, the timescale for this work precluded the use of random sampling techniques for cases that began after April 2008, the point at which the PLO was rolled out nationally. County Courts were therefore asked to contact the relevant local authorities to request the bundles for the 20 most recently completed cases begun since the start of the PLO initiative in each area. However, during the case file analysis, five of the 53 cases were found to have start dates preceding the PLO initiative start-up dates but which were imported into the PLO framework during case progression.

The focus on completed cases may have resulted in the sample being biased towards shorter, and therefore potentially more straightforward, cases. As this research was required to evaluate the PLO process so soon after its implementation, it was inevitable that even some early cases under the PLO could not have completed within the timeframe.

There were particular difficulties in obtaining a sample of cases for review, which are detailed below. These difficulties mean there may be limitations to the sample, in that it may not be typical of care proceedings or those heard under the PLO. However, the sample does provide insight into the process of cases under the PLO, such as the timing and number of hearings, use of expert evidence, and complexity of cases.

In area 2, court staff expressed concerns to the MOJ that local authorities would be unlikely to comply with the request to return court bundles, thus in this area the sample consisted of a mixture of completed and 'ongoing' cases. Many of the 'live' cases identified for a hearing within the initial sampling timeframe were then lost to the study because hearings were adjourned/re-listed, taking cases out of the timeframe allocated for the fieldwork. Thus, the final sample for this area contains a combination of cases, some of which were completed bundles returned by local authorities, some were ongoing bundles retained by the court following a CMC/IRH, and some bundles were left with the court after a Final Hearing. The final sample for area 2 can at best therefore be described as a 'snapshot' sample. In areas 1 and 3 bundles for completed cases often lacked documents (usually final orders and placement of children); where possible this information was updated with the help of court staff.

A schedule for the collection of information was designed; the content of bundles was then analysed and coded according to the four stages of the PLO. Data were entered on to SPSS, frequencies and cross tabulations produced and analyses undertaken. A sample of 53 cases was achieved overall; 17 in area one (all completed cases⁷), 16 cases in area two (most completed but some ongoing), and 20 cases in area three (all completed). As this is a small, non-random sample, any 'trends' suggested must be treated with considerable caution.

7 Three local authorities failed to send bundles/sent the wrong bundle.

Qualitative methods

Fieldwork consisted of site visits to eight courts within the three areas, during which we conducted individual interviews with judges, magistrates, legal advisers and advocates and group interviews with court listing staff, case progression officers and children's guardians from the Children and Family Court Advisory and Support Service (Cafcass (England) and CAFCASS CYMRU (Wales)). This sample of respondents is shown in Table 3.1 below.

Table 3.1: Sample of respondents in the qualitative study

Key personnel	Area 1	Area 2	Area 3	Total
	Number of respondents	Number of respondents	Number of respondents	Number of respondents
Judges in the county court Care Centre (1:1 interviews)	1	1	1	3
Magistrates – chairs of family panel (1:1 interviews)	4	1	6	11
Lawyers (1:1 interviews)	2	3	5	10
	Number of focus groups	Number of focus groups	Number of focus groups	Number of respondents
Legal advisers (focus groups)	1	2	2	10 people in total
Listing Officers and Case Progression Officers (focus groups)	2	1	2	11 people in total
Cafcass and CAFCASS CYMRU children's guardians (focus groups)	2	1	2	27 people in total
				72 people in total
Observations of key hearings	Number of hearings	Number of hearings	Number of hearings	Number of hearings
Case Management Conference	2	2	6	10
Issues Resolution Hearing	2	1	1	4
Interim or fact-finding hearing	-	-	2	2

Court respondents were identified and approached with the help of the court manager in each court while advocates were identified with the help of the Association of Lawyers for Children and guardians with help from Cafcass and CAFCASS CYMRU. Two advocates interviewed represented local authorities; the remainder represented parents and/or children. In all areas we interviewed the Designated Family Judge and the Family Panel Chair in the majority of magistrates' courts. Interviews took place either at the courts themselves, at Cafcass or CAFCASS CYMRU offices, or at advocate's offices. Interviews lasted between 60 and 90 minutes. They were transcribed and subject to thematic analysis using 'Framework' (Ritchie

and Lewis, 2003), an Excel-based qualitative analysis tool developed at NatCen. This approach ensured that the analysis process and interpretations resulting from it were grounded in the data and tailored to the study objectives. Framework has been designed to ensure a systematic and consistent treatment of all units of data (e.g. transcripts of interviews and groups). It also allows for the analytical framework to be refined and modified in the early stages of its use.

Framework involves a number of stages. First, the key topics and issues that emerge from the data are identified through familiarisation with transcripts. Following this a framework of Key Issues is then devised. A series of thematic charts, or matrices, is set up, each relating to a different thematic issue. The columns in each matrix represent the key sub-themes or topics whilst the rows represent individual participants (or groups of participants). Data from each respondent are summarised into the appropriate cell. The context of the information is retained and the page of the transcript from which it comes noted, so that it is possible to return to a transcript to explore a point in more detail or to extract text for verbatim quotation.

Organising the data in this way enabled the views, circumstances and experiences of all participants to be explored within a common analytical framework which was both grounded in and driven by their own accounts. The thematic charts allowed for the full range of views and experiences to be compared and contrasted both across and within cases, and for patterns and themes to be identified and explored. By storing the data in a spreadsheet, cases could be grouped and regrouped according to emergent themes and key analytical variables.

The final stage involved classificatory and interpretative analysis of the charted data in order to identify patterns, explanations and hypotheses. The full diversity within a given theme was reflected rather than any numerical dominance within the dataset. Factors accounting for exceptional cases are explained.

All respondents were assured of anonymity and no quotes are used in this report, nor shared with the MOJ.

With the consent of all parties in court, observations were conducted of 16 hearings across the three areas (details of which are included in Table 3.1). These observed the implementation of the PLO in practice rather than focusing on the content of any one case. These observations informed the qualitative analysis and served as context for interviews (although specific cases were not discussed). The hearings were not selected according to any criteria but rather the researchers observed a snapshot sample of those taking place during the site visits.

Limitations of the current study

There are pros and cons to the sampling and methodology used in the study. As outlined previously within a sample based on more complex cases in care proceedings (i.e. county court cases), there may have been a bias towards shorter cases in the quantitative work

because of the predominance of cases that had begun and completed since the start of the PLO initiatives. A potential advantage of using only county court cases is that we are analysing compliance in what are probably some of the more difficult of cases. However, we are also analysing cases expedited with the enhanced expertise and experience not only of a county court, but also of a court where arguably aspects of the PLO have been in operation for some time. This means that we have been unable to examine quantitatively those (perhaps less complex) cases dealt with in the more generalist and arguably less experienced magistrates' courts and in those courts with less experience of the PLO.

The same factors influence our qualitative findings. We have investigated courts where the PLO has been in operation longer and where there is likely to be stronger leadership around its implementation by senior judiciary. This will undoubtedly provide us with a rich account of the strengths and weaknesses of the PLO in operation. However, it does not allow us to discuss those areas where the PLO has been implemented more recently, or where there may be less ownership of the PLO by senior judiciary and others.

The qualitative investigation was purposely limited by the MOJ to court processes. Informants from local authorities were restricted to advocates. We therefore cannot report on social work practices in the pre-proceedings preparation of s.31 cases and our capacity to report on the impact of the PLO on local authority practice is limited.

Although fieldwork for both the qualitative and quantitative components was carried out simultaneously, in certain respects, the quantitative and qualitative data reflect two different timeframes. All but ten of the cases in the quantitative sample commenced before the national roll-out of the PLO (1 April 2008). Local authorities participating in the initiative areas did not have a statutory obligation to comply with PLO guidance until 1 April 2008 but were simply volunteering to trial the new procedures. In this sense our capacity to measure 'compliance' is limited. For many cases where the standardised PLO documents were not utilised but where the information itself was nevertheless filed (under a different document heading), the information was coded as 'filed'. Qualitative interviews and observations focused on the PLO as it is currently practised. Any resulting anomalies will need to be taken into account when interpreting findings.

The utility of our findings therefore is limited to providing information on the likely range of impacts of the PLO and the factors likely to play a part in facilitating or impeding its implementation elsewhere. Our findings should be useful in informing future guidance around the implementation of the PLO, in clarifying certain elements within the guidance, in identifying areas for further investigation and in designing further training and support around implementation. However, this study should not be treated as an evaluation of the PLO per se and we recommend that a comprehensive evaluation of the PLO in a range of settings is conducted in the future.

4. Results

Results are presented in four substantive sections covering findings on the four stages of the PLO in sequence. In all four sections quantitative results precede qualitative findings.

All the cases tracked below contained multiple allegations of child maltreatment and failures of parenting; there were no 'single issue' cases or evidence of applications in borderline cases. Most cases involved expert evidence, and most cases – as findings below demonstrate – were dynamic.

Quantitative sample

Cases and courts

As identified above, bundles for 53 cases came from three county court Care Centres: 17 in area one, 16 in area two and 20 in area three. The courts, sample size and criteria for the selection of cases were determined by the MOJ with a predominant focus on those that began and completed since the PLO initiative in each area.

Case complexity

Studies of care proceedings indicate several variables in the profile of children and parents contributing to increased complexity. Some of those contributing to failures of parenting (e.g. mental health problems, drug addiction, involvement in crime, failure to cooperate with agencies) appear constant across studies (see Brophy 2006 for a review of studies to 2006). However, caution is necessary in comparing profiles in this sample with others: it is not a random sample and it is early days for the PLO. Any discussion of the profile of, for example, parents must be speculative. Some findings suggest similarities with other studies but a larger sample would be required to assess whether pre-proceedings work with parents has had any impact on the profile of children and parents in cases that result in care proceedings.

Profile of children

Most cases in this sample (59% - 31/53) concerned one child; a high proportion (81%) involved no more than two children. A review of available studies to 2006 (Brophy, 2006) indicated some 80% of cases involved no more than two children. In this sample 66% of children were under six years and just over 9% under 12 months. The review found on average some 63% of children were under six years at application and between 10 and 14% were less than twelve months. There were about equal proportions of males and females in this sample (51% and 49% respectively); that finding also reflects the review of previous studies. In this study, cases were drawn from courts serving substantial minority ethnic populations and a considerable proportion of children in the sample (45%) came from minority ethnic communities.

At the start of proceedings most children in this sample (56%) were already living apart from parents – 51% in foster care, 5% with extended family. The review of earlier studies identified between 44 and 55% of children lived away from home at this point. In this study 98% of

families were known to Children's Services and most children (66%) were/had been on a child protection register or were the subject of a Child Protection Plan. Similar rates were found in the review of previous studies: over 98% of families were known to Children's Services and most children (67 - 73%) were/or had been on a Child Protection Register (Brophy, 2006).

In this study 25% of children were subject to emergency protection orders immediately before care applications. The review of studies to 2006 indicated some 35% of children were subject to emergency measures at the same point. As with much of these data, the former figure requires tracking with a larger representative sample further into the life of the PLO. Such work should consider the impact of case law on the use of emergency orders⁸.

Many children in this study (42%) were subject to a placement application during proceedings; most of these (81%) were heard at the final hearing for a care order.

Profiles of parents

In this sample, immigration status/jurisdictional issues arose in 14% of cases. Almost all mothers (93%) were separately represented, compared with 45% of fathers; 6% of parents were jointly represented. Other studies indicate variation in representation but low levels of involvement by fathers and limited joint representation (Brophy, 2006).

Few relatives were respondents at the start of cases (8%) but in almost half the sample (49%) relatives joined in later on. This figure also requires further monitoring; in the review to 2006 samples indicated between 14 - 21% of cases involved other respondents but as Hunt *et al.* (1999) highlighted respondent figures may underestimate family involvement. This is because people may be assessed as carers but without legal representation as they do not qualify for assistance with legal costs.

Many parents in this sample had drug and alcohol problems (36% and 40% of cases respectively). As the review of other studies indicated (Brophy, 2006), these problems were part of a range of factors contributing to failures of parenting. Such problems might add to case duration where there was a delay in parents engaging with professionals; where parents did engage and agreed to participate time was required for treatment and for monitoring whether a drug-free life style could be maintained in wider communities. This was usually coupled with an assessment of parenting. These factors might increase case duration; they also indicated it was unrealistic to expect such parents to be ready to comply with the timescale for filing position and witness statements at stage 1 in the PLO.

In this sample, in 73% of cases, local authorities alleged a lack of parental cooperation. The review of research to 2006 indicated that on average 72% of parents were failing to

⁸ X County Council v B (Emergency Protection Orders) [2004] EWHC 2015 (Fam) [2005] 1 FLR 341. Re X (Emergency Protection Orders) [2006] EWHC 510 (Fam) [2006] 2 FLR 701.

cooperate with health and social services. In this sample some 43% of cases also contained allegations of involvement in crime and/or involvement with a partner involved in crime. Where this was combined with drug addiction it could increase complexity. Over half of mothers (55%) in this sample also suffered male violence and 42% of cases included allegations of a failure/inability to protect a child from a partner.

In this sample, cases all contained multiple allegations of child maltreatment and failures of parenting; there were no 'single issue' cases or evidence of applications in borderline cases. Most cases involved expert evidence. Overall findings point in the direction of patterns found in previous studies (Brophy, 2006, Masson et al, 2008) but further monitoring with a larger sample under the PLO would be necessary to establish how representative these early cases might be.

Missing data

The reasons why there is not full information for all cases vary; some cases were not completed at the point of data collection, thus had not reached the point at which information would be filed, and for some (completed) cases certain information was not available – because the document was not relevant to a case or because it was not filed. In some cases it was simply not possible to say which because the tracking document (PLO 1) had not been completed or had not been filed. So, for example, with regard to checklist documents, where any of these were missing for some cases (post April 2008), Supplementary Form PLO 1 should have been completed and updated by the court indicating whether a particular document was filed, outstanding or not applicable to the case, but this was not always done.

For all cases in this sample, stage 1 of the PLO was completed, thus Table 4.1 sets out the range of documents (checklist and others) to be filed for the First Appointment. Most checklist documents will be relevant for all cases, but some documents will not. For example, arguably few cases will contain s.7/s.37 reports. Moreover, other documents such as minutes of a family group conference may not have been filed because it was not possible to hold a conference before proceedings, or family members had already been identified as not suitable to care for a child, or because the local authority had not explored this avenue. It was not always possible to differentiate between these possibilities – only whether the document was filed or not. For Table 4.2, it is anticipated by the PLO that (with the exception of the guardian's input) these documents would normally be filed for the First Appointment.

Some tables have a mixture of denominators. For example, for Table 4.3, overall data were missing for two cases, thus the denominator was taken as 51. For Table 4.4 – Advocates' Meeting held – data are only presented for those cases where there was a clear indication that a meeting had been held. For Table 4.5 (Tasks achieved at the CMC) concerning items 'Confirmation of the Timetable for the Child' and 'Draft Case Management Order' approved, two cases had not reached the CMC or had gone straight to an IRH, and so are missing data for this item. The number of cases with information available is therefore given for each item in the table.

Stage 1. Issue and First Appointment

Stage 1. Issue and First Appointment: quantitative results

Studies have highlighted the absence of Core Assessments at the beginning of care proceedings, with recent work suggesting that the number of cases that begin without this document was increasing – from 34% in 2003 (Brophy et al, 2003) to 57% of cases in 2008 (Masson et al, 2008). In the current study, 40% of cases started without a Core Assessment (Table 4.1). However, completion of this document is not, and cannot be, a pre-condition for proceedings. It is recognised that there will be circumstances where it has not been possible for the local authority to undertake this assessment. The statutory guidance for local authorities (DCSF, 2008; WAG, 2008), states that in all cases a Core Assessment should be completed but the need to complete it should not deter necessary safeguarding action from being taken. There might be underlying reasons (such as lack of cooperation by parents) in explaining why at least some assessments had not been undertaken.

All cases began with an Initial Social Work Statement filed at Issue – as did cases pre the PLO. Most cases in this sample also had an initial Social Work Chronology. With regard to attempts to ‘front load’ the process at the pre-proceedings stage by increasing work with extended families, a fifth of cases included the minutes of a Family Group Conference held pre-proceedings, and 4/53 cases included a kinship assessment.

Documents specific to the PLO (from April 2008 supplementary forms PLO1-6) were less evident in many bundles and completion of specified forms that were included was often limited. Very few ‘Letters before Proceedings’ or Allocation Records were completed while Part 3 of the Allocation Record – Timetable for the Child – was often blank. Some of this may be related to the fact that there are so few post-April 2008 cases. Although ‘trial’ draft documents existed in the 2007 initiative phase and all areas were involved in that phase, other evidence (Brophy and Sidaway, 2008) indicates forms were slow to be utilised – and in some areas were not used at all. Few cases contained a written guardian’s Analysis and Recommendations at the First Appointment (Table 4.2); guardians may have made a verbal contribution although shortages of guardians in some areas make that less likely⁹.

9 The PLO does not require a written report from children’s guardians at First Appointment although both Cafcass and CAFCASS CYMRU guardians reported that this was preferable, where possible. Cafcass guidelines state “*For public law cases where the First Appointment is within days of your appointment, you may prefer to provide the information verbally and only write the Initial Analysis for the Case Management Conference. We have produced a ‘verbal information’ checklist for this situation.*” (Cafcass, 2007b). CAFCASS CYMRU guidance is more assertive on written reporting: “*In public law cases the first appointment is usually listed within days of the appointment of the Guardian, and within six days. The Guardian should provide the written information in a brief bullet point format*” (CAFCASS CYMRU 2008a). During the fieldwork period two of the three areas were experiencing significant delay in the appointment of children’s guardians (CAFCASS CYMRU were not experiencing such delays).

Table 4.1 Documents filed on Issue

Pre-proceedings checklist documents filed on issue:	Proportion filed	%
Core Assessment	32/53	60
Kinship assessment	4/53	8
Additional local authority reports/records	22/53	42
Key minutes/records for child including strategy discussion record	22/51	43
Minutes of Family Group Conference	11/52	21
Records of discussion with family	2/16	13
s.7 or s.37 reports (pre-existing welfare reports on the subject child)	3/53	6
Cases noting that pre-proceedings documents were still to come at the First Appointment/first after transfer	29/50	58
Other documents filed on issue:		
Initial Social Work Statement	53/53	100
Social Work Chronology	44/52	85
Local authority Schedule of Proposed Findings	39/53	74
Local authority Letter before Proceedings	3/52	6
Local authority Allocation Record	7/53	13
Local authority Timetable for the Child	3/53	6
Interim Care Plans	32/53	60
Outline/pre-existing Care Plans*	16/53	30

* Interim and outline/pre-existing Care Plans are not mutually exclusive although in practice only two cases had both.

In this and all following tables, the proportion and percentage of cases are presented with respect to the number of cases where data were available. Thus in a number of instances the denominator is less than 53, and the percentage figure will be calculated on that lower figure. Reasons for missing data are discussed earlier in this section.

Table 4.2 Documents filed for First Appointment

	Proportion filed	%
Local authority outline position statements	36/53	68
Parents' (or others') outline position statements	4/53	8
Local authority initial witness statements	29/53	55
Parents' (or others') witness statements	2/53	4
Guardian's initial report: Analysis and Recommendations	9/53	17

Standard directions on Issue and post transfer

All cases in this sample for which data were available were transferred to county court Care Centres with 34/52 cases (65%) transferred on Issue (but local practices might differ in each of the three areas). These were almost evenly split between cases in which standard directions were issued by the FPC prior to transfer 49% (26/53 cases) and those in which standard directions were undertaken by the Care Centre following transfer 51% (27/53 cases).

Use of experts at Stage 1

Most cases for which there were data contained leave in standard directions issued in Stage 1 to instruct experts (63% - 32/51 cases)¹⁰. Table 4.3 details the main disciplines for which directions were issued.

Use of experts: First Appointment – standard directions

According to the PLO, discussion about use of experts is set for stage 2 (Advocates' Meeting prior to the CMC). In practice, however, the decision to instruct experts usually started at the first hearing; this is consistent with practices in care proceedings cases pre the PLO (Brophy et al, 1999; 2003). In some cases, it is likely that this decision was now being made by the court without the benefit of a welfare input from the guardian due to the unavailability of guardians in two of the sample areas. It remains possible that the guardian was in attendance and able to give a verbal contribution; that requires further research (information on this would, for example, be available from the court file attendance sheet but it is not duplicated in the case bundle). However, in this sample where data were available, most applicants were ready to identify the type of expert evidence required at the First Appointment so the court was able to give leave for the instruction and in most cases set a timetable for filing the report. This was likely to contribute to reducing unnecessary delay.

Table 4.3 Use of experts: First Appointment – standard directions

Main disciplines for which directions for reports were issued:	Proportion of cases where directions made	%
Paediatric and other medical evidence	4/51	8
Adult psychiatric evidence	12/51	24
Child psychiatric evidence	2/51	4
Psychological (child and parent[s])	2/51	4
Psychological (mother only)	10/51	20
Psychological (father only)	6/51	12
Multi-disciplinary assessment	2/51	4
Residential/non-residential assessment	6/51	12
Other types of expert reports	31/51	61

Up to three other types of expert assessment were allowed for on the data collection instrument; in the event some cases contained more. Therefore this is likely to be an underestimate of the expert reports commissioned at this point. These directions cover reports for issues such as DNA testing, Independent Social Work Assessments, GP records, health visitor records, and hair strand results for drug testing.

Contrary to much rhetoric about the use of experts, many reports commissioned at this stage were in fact filed on time or early (before the date timetabled by the court). That is, for the main

¹⁰ In one case (2%) the court refused permission to instruct an expert, and in the same case, the court again refused permission to a parent to instruct an expert at stage 2 – CMC.

categories of expertise covered in Table 4.3 (clinical and residential/non-residential assessments but excluding 'other' reports) 15/33 reports (46%) were filed early or exactly on the due date¹¹.

Stage 1. Issue and First Appointment: qualitative results

The pre-proceedings process

For the majority of respondents, there was a need to balance a focus on compliance with a focus on the pre-proceedings process itself.

The Letter before Proceedings sent to parents is broadly supported in its role of clarifying the reasons for taking proceedings. However, parents who have been involved with the local authority for some time may be slow to access legal advice for a range of reasons (for example, factors concerning their own vulnerability or limited capacity to understand what a pre-proceedings letter entails, or indeed that they may see solicitors as merely part of 'the system' that is threatening them). For this reason, the intervention by a solicitor in the first instance was described as a complex one (that is, convincing parents that they are now at risk of their child being taken away, gaining parents' trust and clarifying what the issues are for parents, and what they would need to achieve in order to prevent the case going to court).

Respondents were concerned that there may not be enough time between the letter and proceedings being taken up to undertake any meaningful discussions with parents. This added to the impression that there is no real expectation that proceedings might be avoided. The emphasis placed on preparation prior to an application to the courts could lead to situations where the local authority has invested so much resource in its application that the letter is seen merely as a notification of their intention to proceed.

This situation was seen to be exacerbated by the level at which pre-proceedings legal advice work has been fixed. That is, experienced childcare lawyers felt that they simply could not afford to provide meaningful advice at the pre-proceedings stage because of the low (and limited) fee available. This might lead either to lower-quality legal advice (e.g. from a junior or para-legal) and at a sensitive and arguably crucial stage in cases where the skills of an experienced childcare lawyer are required. Or, more likely, to the development of a norm that this stage be skipped in the face of a local authority determined to proceed anyway. Thus, the role of the solicitor becomes one of case preparation and of representation rather than advice to avoid proceedings.

11 Information was missing with regard to 27% (9/33) reports covered by directions. This was because of a mixture of issues: no filing date was set by the court at the time directions were issued (e.g. where a particular expertise was required but a clinician had not been identified); a report was filed 'undated'; or there is no evidence that the assessment was in the event pursued. Of the remaining nine reports that had had filing dates beyond that initially timetabled by the court, three were filed within five days of the original date timetabled and in time for the next scheduled hearing date (this is not to say that hearings were not subsequently adjourned; however, where this happened evidence indicates it was not due to the timing of the expert report tracked here but for other reasons). Four were filed between 14-31 days after the original filing date, and still filed before the next scheduled (CMC) hearing. The remaining two reports were filed two months and five months after the due date and in both, delays were caused by increased complexity and changed circumstances.

Respondents argued that in the absence of good legal advice from a specialist childcare lawyer, parents might remain unfocused as to their options. This could delay proceedings if they occurred because parents would not have invested the time to identify alternative placement and carers for their children (which might indeed be acceptable to the local authority and therefore mitigate proceedings).

Overall, therefore, respondents were concerned that parents might have little opportunity to either frame their response to the Letter before Proceedings or indeed prepare their case properly. This lack of emphasis on the relationship between legal advocate and parents was seen to bring about situations where parents remained unadvised pre-proceedings and unrepresented at the First Appointment. Bearing in mind human rights issues for parents, it is not then too surprising to find that so few parents were able to file position or witness statements at this point (see Table 4.2).

Another concern expressed almost universally was that the length of the pre-proceedings process might be increasing. Therefore, the overall end-to-end time in which the child was considered at risk and subject to local authority intervention and proceedings might not be affected by the PLO or might indeed be lengthened. Moreover, many respondents questioned why the child remained unrepresented during the pre-proceedings process, with some advocates and guardians voicing support for appointing a guardian earlier.

Compliance

While the quantitative sample found over half of cases with some documents outstanding after the First Appointment, respondents described local authority adherence to the Pre-proceedings Checklist as 'patchy' but improving. Some local authorities were more compliant than others. Core Assessments and Interim Care Plans were most often mentioned as missing; however, this might be because these documents were crucial to progressing the case rather than being more frequently absent than others required by the Pre-proceedings Checklist. Contrary to our quantitative findings, respondents reported the presence of the Letter before Proceedings in almost all cases (this might indicate that letters were not routinely filed in bundles).

As in other aspects of the PLO, compliance with the Pre-proceedings Checklist appeared to be driven by the judiciary and was influenced by the relationship between the judiciary and the local authority. This, in turn, was influenced by how well the judiciary interpreted and implemented the PLO. A clear steer about what was expected balanced with what was useful at this stage was considered helpful. For example, in one area a judge had met with all Directors of Children's Services in the local authorities within the court's catchment area. Another area had developed local practice guidance stating the need to balance the presentation of sufficient information at the start of proceedings with the need to avoid overburdening the local authority. The supplementary form PLO 1, and Allocation Record

and Timetable for the Child are expected on Issue; and where possible, also the Schedule of Proposed Findings, initial social work statement, Care Plan and initial Core Assessment. However, this made it imperative for the local authority to catch up with filing before the Case Management Conference.

The PLO's success was dependent on high levels of skill and professionalism from all involved in implementing it, including greater clarity and consistency in determining when the PLO timetable was, and was not, appropriate to meet the demands of the Timetable for the Child. Skill levels increased with practice, and all practitioners identified that those who were involved in s.31 cases infrequently were less adept in the PLO's application. This also accounted for some disparity in the way the PLO was applied (flexibly or rigidly) by legal advisers and the judiciary.

Children's guardians

During the fieldwork period two of the three areas were experiencing significant delay in the appointment of children's guardians (CAFCASS CYMRU were not experiencing such delays). In these areas, the courts appointed the solicitor for the child in time for the First Appointment, though most advocates for children reported severe difficulty effectively representing their client in the absence of welfare input from a guardian. The presence of guardians at First Appointment was seen by judges and magistrates as useful, although confidence in a submitted written initial analysis from the guardian at this stage was limited. Most respondents were of the view that the guardians' initial view should not be submitted until sufficient time for a meaningful analysis had occurred, suggesting the report should be submitted in time for the Advocates' Meeting in advance of the CMC.

Despite concerns about timing, respondents agreed that early and staged guardian's reports were a useful element of the PLO. Magistrates in particular expressed reliance on the guardian's reports, while for judges they acted as a useful check on case progression and local authority practice. Most guardians welcomed the move to staged reports with an emphasis on analysis rather than a narrative account of the case.

Stage 2. Case Management Conference and Advocates' Meeting

Stage 2. Case Management Conference: quantitative results

For cases for which there were data, many CMCs were adjourned at least once (see Table 4.4) but once held, most (almost three-quarters) were able to identify Key Issues; over half identified the evidence necessary but very few were able to identify witnesses or their availability at this point. Just over a quarter of CMCs identified a need for a further hearing(s) prior to the IRH (see Table 4.5) and most courts (over three-quarters) issued directions for the instruction of experts at that point (see Table 4.7).

Table 4.4 Advocates' meeting and Case Management Conference timetabling

	Proportion of cases	%
Advocates' Meeting held	34/35	97
CMC adjourned at least once	20/51	39

Table 4.5 Tasks achieved at the Case Management Conference

	Proportion of cases	%
Identification of Key Issues	35/48	73
Evidence necessary to resolve Key Issues identified	30/48	63
Witnesses identified	8/48	17
Witness availability established	2/48	4
Court able to confirm the Timetable for the Child	10/40	25
Draft Case Management Order approved	12/39	31
Date set for Issues Resolution Hearing	40/50	80
Date set for Final Hearing	16/51	31
Identification of need for further hearings	13/50	26

For the period covered by this sample, it appeared that for many local authorities use of the PLO case management tools as such was limited. This was despite regions being involved in the 2007 initiative areas prior to April 2008 (see Table 4.6). Filing of major case management tools (e.g. the Draft Case Management Order, Schedule of Proposed Findings, Allocation Records, Matters in Dispute) was achieved in about half of cases for which data were available – although completion of all the required fields of information was sometimes poor. This was especially the case with regard to the Timetable for the Child. It is noteworthy that over half of cases lacked a written report from the child's guardian for the CMC (Table 4.6).

Table 4.6 Statements/documents filed for Case Management Conference

	Proportion filed	%
Local authority position statement	20/51	39
Guardian's initial/interim analysis and recommendations	20/50	40
Draft Case Management Order	27/51	53
Local authority case summary	19/28	68
Schedule of Proposed Findings	20/27	74
Timetable for the Child	16/28	57
Disputed threshold: Local authority identified findings it would seek from the court	12/28	43
Setting out matters in dispute	11/27	41
Identification of kinship assessments to be pursued	9/41	22

Table 4.7 details the main disciplines of expert evidence instructed at the CMC. Courts might have also granted permission to parties to instruct experts at any one of the additional hearings held in these cases. Thus, the overall number of expert reports in the sample cases might exceed the total of reports filed following directions filed at stages 1 and 2 in proceedings.

Table 4.7 Use of experts: directions issued at the Case Management Conference

	Proportion of cases where directions made	%
Directions/further directions to instruct experts	38/53	72
Main disciplines for which directions were issued:		
Paediatric and other medical evidence	6/53	11
Adult psychiatric evidence	6/53	11
Child psychiatric evidence	3/53	6
Psychological (child only)	3/53	6
Psychological (child and parent(s))	3/53	6
Psychological (mother only)	12/53	23
Psychological (father only)	11/53	21
Multi-disciplinary assessment	1/53	2
Residential/non-residential assessment	1/53	2
Other types of expert reports	44/53	83

For the main categories of clinical expertise sought at this point (excluding an analysis of reports that were coded under ‘other’ categories), 16/43 reports (37%) were filed on or before the date set by the court at the CMC. 18/43 reports (42%) were filed after the first date set at the CMC of which 9 (50%) were filed within 10 days of the first date set by the CMC and 5 were filed within 28 days of the first date set by the CMC. For a further 9/43 reports (21%), data are not available (either assessments were not ultimately pursued/undertaken or reports were filed ‘undated’).

This is not of course to suggest that cases were delayed because applicants did not file information in the prescribed format – or that filing or extensions of filing time for expert reports *per se* delayed cases (see Table 4.14 later in this section).

Stage 2. Case Management Conference: qualitative results

Many respondents pointed out that only straightforward s.31 cases would proceed directly from First Appointment to Advocates’ Meeting without an interim hearing. In some cases this might be a directions hearing (sometimes called an adjourned CMC), or a contested hearing addressing an application for an Interim Care Order. Advocates for parents reported a need to support families with practical arrangements for contact etc. Social workers might also be tied up with practicalities, and as a result for many involved, the focus was on stabilising the immediate circumstances of the family before returning to managing the s.31 case proceedings.

Timetabling of the CMC is a key point at which respondents identified tension between the perceived best interests of the child and case resolution, on the one hand, and fit with the PLO on the other. In all three areas the optimal timing of the CMC was often disputed, with the judiciary keen for early CMC to avoid ‘drift’ in cases, and advocates and guardians in

particular preferring a later date to allow more time for preparation. In addition, the Timetable for the Child was not mentioned during court observations, and rarely during qualitative interviews, supporting its limited impact identified in the quantitative findings.

Despite these problems most respondents viewed the CMC as useful in concentrating all parties on what further evidence would be required to decide the outcome of the case, and timetabling the next stages of proceedings.

Advocates' Meetings prior to the CMC were reported to almost always happen, and were overall regarded as a useful and welcome addition to s.31 proceedings. All reported that the Draft Case Management Order (CMO) was discussed at that meeting. Most respondents felt that the absence of parties allowed advocates to usefully focus on case management, though some, in particular children's guardians, were concerned that key decisions might be taken at that meeting without expert input.

Advocates themselves were most likely to voice concern about the Advocates' Meetings, for the following reasons:

- confusion and concern over payments;
- difficulty in timetabling a meeting and time taken out of the working day, when much of the discussion might usefully be done via email;
- advocates attending unprepared and uninstructed;
- draft CMO not circulated by the local authority in advance;
- the use of junior advocates for these meetings might prevent case progression;
- late arrival of evidence and position statements prior to the meeting, leaving little time to consult with clients, in particular, parents.

In all three areas, and in line with the quantitative findings, there were reports of CMCs commonly adjourned, repeated or delayed. Again, most respondents perceived this situation to be improving. Only one court visited had a case progression officer, and this role was key to managing preparation for the CMC and supporting timely filing of documentation to the court. There was variability in how delays were handled by the courts at this stage, with some judges and legal advisers granting adjournments more readily than others. In addition, differences emerged in terminology, with courts using 'repeat' or 'adjourned' CMC, with some also calling for additional directions hearings, where in practice there appeared no difference between the hearings.

The following reasons were commonly identified for delays at this stage:

- local authority mismanaging disclosure of key documentation (particularly CMO and Care Plans);

- delays in disclosure of police and medical information;
- lack of guardian's report;
- not knowing enough about expert availability;
- change in local authority social work staff (for example, transfer between social work teams).

Draft Case Management Orders were usually filed with the courts in advance of the CMC, although in all areas legal advisers, magistrates and judges had limited opportunity to read them in advance. Respondents from all groups frequently complained about the PLO forms, (in particular the CMO and the directions forms). The following concerns were raised:

- unhelpfully laid out and difficult to complete;
- not geared up to allow quick identification of progress and Key Issues;
- overly prescriptive;
- over-long;
- not integrated with other proceedings (twin tracking and placement applications in particular).

In addition, some courts were struggling with IT systems that were incompatible with the PLO forms.

There were mixed views on the impact of the PLO on the demand for expert evidence. Early identification of issues and front loading of assessments prior to proceedings were seen by some respondents, in particular the judiciary, as reducing this demand (though there was limited quantitative evidence of expert assessments prior to proceedings). However, advocates and guardians were less likely to report a reduction in the use of expert evidence, and in the quantitative data over three-quarters of CMCs issued directions to instruct experts.

In two areas the expectation from the county court was that no requests for expert evidence should be granted by the FPC at the First Appointment if the case was to be transferred; this should be left until the CMC. However, some legal advisers suggested that where it was 'obvious' expert evidence would be required it should be commissioned at this stage.

Stage 3. Issues Resolution Hearing

Stage 3. Issues Resolution Hearing: quantitative results

As Table 4.8 demonstrates, in most cases in this sample there was evidence that an Advocates' Meeting took place prior to the IRH and this is in agreement with findings from the qualitative study. For those (limited) cases where information was available in bundles, most meetings (over three-quarters) produced a local authority summary of the case for the IRH along with a Timetable for the Child. Fewer (33%) produced a guardian's Analysis and Recommendations or a draft/updated Case Management Order. The data indicate that in

this sample one case was concluded and a final order made at the IRH. More cases (8) were 'truncated' going from a CMC or other hearing to a Final Hearing without holding an IRH.

Table 4.8 The Advocates' Meeting and documents prepared and filed for the Issues Resolution Hearing

	Proportion of cases	%
Evidence an Advocates' Meeting held	22/27	81
Documents prepared and filed:		
Local authority case summary	16/21	76
Guardian's Analysis and Recommendations (Interim/Final)	14/42	33
Draft/updated Case Management Order	15/42	36
Timetable for the Child	14/21	67
Record of Key Issues to be determined at the IRH	17/40	43
Identification of need for a contested hearing	7/43	16

Like CMCs many IRHs (66% of cases where data were available) were subject to at least one adjournment. Once IRHs were held, further directions for the filing of evidence/reports were issued at this point in almost all cases (95%). Under half (43%) of cases contained information indicating Key Issues to be determined were identified at this point (see Table 4.9).

Table 4.9 The Issues Resolution Hearing: adjournments, tasks and objectives

	Proportion filed	% filed
Issues Resolution Hearing adjourned at least once	27/41	66
Identification of Key Issues to be determined	17/40	43
Further directions issued	37/39	95
Approval of template order	11/33	33

Stage 3. Issues Resolution Hearing: qualitative results

Like the CMC, many respondents reported a series of hearings being held prior to the IRH. Most frequently mentioned were fact-finding hearings and threshold hearings. These additional hearings were generally welcome as the period of time between the CMC and IRH was perceived to be a vulnerable period where changes to family and child circumstances might alter the nature of the case. IRHs were listed in all three areas for one or two hours; in our observations they were frequently shorter.

Many respondents, in particular advocates, reported a lack of shared understanding between the judiciary and advocates over the purpose of the IRH immediately after the PLO was introduced. Concern that it would be used to resolve issues without a Final Hearing by placing undue pressure on parties to agree had, for most respondents, proved unfounded. Most agreed that the IRH was used to determine which issues were key to resolving the case and should go forward to a Final Hearing, and which should not be disputed further. Most

agreed that the IRH was usefully achieving this, though some advocates felt that this was happening pre-PLO as part of the natural progression of cases.

In all three areas, respondents reported that few, if any, cases were resolved at the IRH stage and this is in agreement with findings from the quantitative data. Most respondents agreed that this was because of the complex nature of s.31 cases, and parents' desire to contest as far as possible. Cases that did conclude at IRH were those deemed more straightforward or where children were rehabilitated with a parent/other carer. Respondents from FPCs identified two further issues around IRHs:

- Fees: guardians and legal advisers suggested there may be an incentive to conclude at IRH so that the local authority fee payable for a Final Hearing would not apply. Thus some respondents perceived that financial considerations might be playing a part in case progression.
- Magistrate availability: as IRHs were frequently held in the absence of magistrates, those that might otherwise have turned into a Final Hearing were prevented from doing so because of a lack of magistrate availability, or time to read the papers and write reasons for judgment.

Most courts reported fewer adjournments of IRHs than CMCs. Similar to the CMC, the timing of the IRH was a key point at which many respondents identified tension between the perceived best interests of the child and case resolution, on the one hand, and fit with the PLO on the other. In addition, the timing of the IRH was often unhelpful for guardians, leaving little time between the expected date of expert evidence availability and the submission of the guardian's report. Advocates also reported difficulty in reading expert evidence, and consulting with clients in time for the Advocates' Meeting. Finally guardians often reported a lack of clarity over whether to submit an Interim or Final Analysis at this stage and in one area would welcome better guidance from the courts.

Respondents, in particular advocates, felt that IRHs were being adjourned or postponed simply because they were being timetabled too early. Adjournments happened for the following reasons:

- Expert evidence was frequently mentioned as a cause of delay. Some dates set for expert evidence at the CMC might be unrealistic but on the basis of the quantitative results it would be inaccurate to suggest that all reports were delayed or resulted in delay in cases. The overriding perception amongst respondents was of a small pool of available experts on which to call; however, others reported that this in fact was due to over-reliance on familiar experts. In one area it was felt that the judiciary would only allow evidence to be commissioned from a small group of 'trusted' experts. In addition, some experts might be unaware of, or feel unaccountable to, the PLO timetable. Finally, poor instruction of experts was mentioned, resulting in additional guidance drafted by the judiciary in one area.

- Disclosure of police and medical evidence was a frequent cause of delay.
- Some issues, in particular drug and alcohol rehabilitation, took longer to address and subsequently to test in the community than the PLO allowed.
- Lack of local authority compliance in the submission of evidence and Care Plans was a cause of frustration for many. The judiciary were keen to enforce compliance but the FPCs had less authority here. Problems and delays caused by local authority resources remained outside the reach of the PLO.
- Late joining of parties created the requirement for additional kinship assessments.

The issue of parties joining late in proceedings was frequently raised by respondents. The PLO was judged successful in addressing this problem, with the renewed focus on a structured timetable useful in encouraging families to identify potential carers earlier in proceedings (though not before proceedings started). Judicial confidence and practice appeared to determine whether delays took place. Whereas judges in the Care Centres were more confident in refusing late kinship assessments beyond the CMC stage, magistrates and legal advisers in the Family Proceedings Courts were less so. Judicial continuity was also likely to play a part here. Legal advisers and magistrates who had dealt with cases previously and were more familiar with the Key Issues might have more confidence to refuse late kinship assessments (although there was little evidence of refusal to allow kinship assessments in the quantitative study).

Finally, in all three areas, the delay in setting the date for the Final Hearing until the IRH resulted in more accurate listings and unblocking the court listing diaries.

Stage 4. Final Hearing

Stage 4. Final Hearing: quantitative results

Table 4.10 shows that in 31/39 cases for which data were available the guardian's report was filed in advance of the Final Hearing. Many cases also contained further evidence filed between the IRH and the Final Hearing.

Table 4.10 Further documents filed between Issues Resolution Hearing and Final Hearing

	Proportion filed	% filed
Guardian's Final Analysis and Recommendations	31/39	79
Further reports/statements/plans filed after the Issues Resolution Hearing and pre-Final Hearing	31/39	79

Few local authorities changed or withdrew applications for care orders in this sample (12% of cases for which there were data available). Over 40% of cases also contained an application for a placement order, and in almost all cases this application was heard at the same time as the application for a care order (see Table 4.11).

Table 4.11 Changes/additions to local authority applications

	Proportion of cases	%
Local authority changes / withdrawal of an application for a care order	5/43	12
Application for a placement order issued during care proceedings	22/51	43
Placement applications heard at the Final Hearing for a care order	18/22	82
Placement orders made	17/22	77

Table 4.12 shows that for the sub-sample for which we have information on final orders (38/53 cases), many children were subject to a care order and for many of these (17/38 - 45%) a placement order was also made at the Final Hearing. However, a substantial number of cases that began as an application for a care order (9/38 - 24%) resulted in another order placing a child with a parent/relative or other carer.

Table 4.12 Final orders

Orders made	Proportion of cases	%
Care order only	13/38	34
Care order plus another order	17/38	45
Supervision order only	1/38	3
Supervision order plus another order	3/38	8
Section 8 order only	1/38	3
Section 8 order plus another order	2/38	5
Placement order	17/38	45
Special Guardianship order	4/38	11
Other order	2/38	5

The majority of cases in the quantitative sample required more than the four main hearings outlined in the PLO (Table 4.13). This is supported by interview respondents who noted the requirement for additional hearings, particularly in complex cases (see Stage 2 Case Management Conference: qualitative results).

Table 4.13 Cases requiring additional hearings to those specified in the PLO

	Proportion of cases	%
Cases requiring at least one additional hearing	40/46	87
Cases requiring no more than two additional hearings	23/46	50
Cases requiring up to four additional hearings	11/46	24
Cases requiring five additional hearings	6/46	13
Cases requiring six additional hearings	2/46	4

Hearings referred to (in Directions) as 'Pre-Hearing Reviews' were held in 5/38 cases (13%).

Table 4.14 Case Duration by stage

	Proportion of cases	%
First Appointment held by day 6	40/51	78
Case Management Conference by day 45	17/52	33
Issues Resolution Hearing not later than 25 weeks	14/44	32
First day of Final Hearing within 40 weeks*	30/43	70

* This last figure is based on the largest proportion of the sample for which we have robust data on the first day of the Final Hearing (43 cases). We have therefore taken day one of the Final Hearing as the end date for the calculation; this may result in a small underestimation of duration but it is unlikely to be much (other research indicates 70% of cases were completed in one day) (Masson et al, 2008).

Cases included in the quantitative sample indicated that most cases for which there were data, (70%) were completed within 40 weeks, even though few fitted the intervening timescales set for a CMC or an IRH (see Table 4.14). Given the sampling limitations, these data should be treated with caution. Qualitative data indicate cases were being listed more accurately, though both sets of data indicated frequent additional hearings at stages 2 and 3. However, we found no evidence that these additional hearings were not appropriate to the needs of the case. That is, they were not, in general, the result of inefficiency or poor timetabling. However, this conclusion must be taken in the light of our other conclusion that efficiency and timetabling were likely to be a function of the appropriate and skilful application of the PLO by the judiciary, including knowing when to step outside of the timetable suggested by the PLO. The question of whether the PLO has led to faster conclusion of cases is more vexed. What we can say is that we found little evidence of ‘drift’ in cases. In addition, respondents in the qualitative study were clear that the length of the case should be determined by its complexity and the needs of the child rather than a 40-week timeframe.

In addition to those cases completed by week 40, a further 6 cases were completed by week 50. An analysis of these cases shows them to be highly complex with multiple concerns and allegations leading to failures of parenting. All involved expert assessments and contained allegations of failure of parents to cooperate with Children’s/Health Services. The majority also contained allegations about drug/alcohol abuse and crime. These factors were coupled with mental health problems, a learning disability, violence, homelessness and chaotic lifestyles.

Where cases included parental drug and alcohol addiction, these usually required extra time to demonstrate parents could live in the community free of drugs before unsupervised contact/rehabilitation might be tried. Timescales for this varied within and between local authorities and some adult psychiatrists; many would want several months of negative hair strand results before addressing safe placement of a child.

The multiple socio-economic and psychological problems experienced by the parents in these cases mean that the point at which a parent was ready and able to engage with support services could not be dictated by the PLO and could result in a need for further assessments at the IRH stage, and/or a further deferred Final Hearing date.

Stage 4. Final Hearing: qualitative results

Despite limited evidence from our quantitative findings, our qualitative respondents (especially listings officers) were clear that the PLO had improved accuracy of listing for Final Hearings and subsequent unblocking of court listings. Fixing the date and estimating time for the Final Hearing at the IRH was almost unanimously perceived as a positive change¹². In one area, Final Hearings were occasionally still listed at CMC stage, but the pre-PLO fear of 'losing your place in the queue' had been largely resolved because of more accurate listings reducing the delay in booking court time.

Similarly, most respondents reported fewer adjournments of Final Hearings, and fewer contested Final Hearings since the introduction of the PLO. Again, this was a consequence of effective signposting, identification of the issues to be resolved, and well-prepared witness templates at the IRH. Where adjournments did happen, the following reasons were most commonly given:

- unexpected and unpredictable events in the family;
- local authority not filing documentation on time, in particular, Care Plans where the child(ren) is expected to be placed with kinship carers.

There was limited evidence of shorter Final Hearings. Similarly, few respondents felt able to conclude with certainty that the introduction of the PLO had reduced the overall time taken to resolve s.31 proceedings, although it had proved a useful tool for identifying delays throughout. Some felt that in 'clear-cut' cases, the PLO might be helpful in expediting proceedings, but for complex cases the timetable was not appropriate or realistic. Those who felt the PLO was impacting on case duration (in the main the judiciary) felt that cases were taking less time but were in the main still falling outside the 40-week Public Service Agreement target.

The implications of these results across all four stages of the PLO are presented in Section 5's summary of findings, recommendations and conclusions. In addition, we make suggestions for further research, including that a comprehensive evaluation of the PLO once it has 'bedded down', and its impact on local authority practice (including throughout the pre-proceedings process), be carried out in the future.

¹² Previously, routine listings of Final Hearings for three or five days meant many courts were running listing systems that involved 'over-listing', or the use of a 'phantom' court, in the expectation that cases would take shorter time and vacated courts could be used for the cases on the waiting list (often private family law cases). Some courts reported they were currently still over-listing on the last day of Final Hearings.

5. Findings, recommendations and conclusions

This section summarises the key findings, offering recommendations and conclusions under the headings: Compliance with the PLO; Duration of cases; Outcomes of the PLO; and Key obstacles to implementation. The discussion is grounded in our qualitative and quantitative data analysis, which is presented in detail in the previous section.

Compliance with the PLO

- The application of the PLO by the judiciary, including magistrates and legal advisers, varied. Some were inflexible in its application to the possible detriment to the case. Like any tool, the PLO's efficacy is entirely dependent on the skill with which it is used. Skilful application includes understanding when the needs of the case require departure from the PLO timetable. Less skilful application would appear to lie in inflexible adherence to the timetable.
- Compliance with regard to the filing of Pre-proceedings Checklist documents (especially the Core Assessment, a key document in social work planning) varied across local authorities (but might be improving). Compliance appeared to be driven by the judiciary. The requirement for local authorities to present all the documents on the Pre-proceedings Checklist at Issue might need review.
- Both qualitative and quantitative findings indicated that poor local authority compliance might impede meeting the objectives of the PLO (and the underlying reasons for this need further study).
- Our findings suggest that work is needed to improve the timing of disclosure of data from partners (local authorities, the police, and medical agencies).
- The First Appointment might be set too early for parents to be able to file documents such as a position and witness statement.
- Lack of availability of guardians in two out of the three areas sampled led to concerns about a lack of welfare input into legal representation at the initial stage.
- The timing of the first children's guardian's report might need review (in partnership with Cafcass and CAF/CASS CYMRU) to ensure that enough time for a proper analysis was allowed.
- The process for Advocates' Meetings (e.g. whether they need to take place in person, and the implications for fees) needs further clarification with greater emphasis placed on outcomes (e.g. preparation of a Draft Case Management Order, identification of expert evidence).

Duration of cases

- Most cases had a First Appointment by day 6. However, 'compliance' declined for stages 2 and 3 with a third of cases having a CMC by Day 45 while just over a quarter of cases had an IRH not later than 25 weeks. Both the CMC and the IRH were key points at which tension emerged between the perceived best interests of the child and case resolution, on the one hand, and 'fit' with the PLO on the other.

- Although adjournments and additional hearings were common at stages 2 and 3, the reasons for these were appropriate and in response to the needs of the case.
- From Application to first day of Final Hearing, 70% of the cases in this sample (30/43) completed in under 40 weeks; 84% of cases (36/43) completed by week 50. However, the sample was not random, so these findings should not be used to indicate the duration of cases more broadly.
- Despite this, most respondents in the qualitative research felt that the PLO had not speeded up s.31 proceedings (although they did feel that there were now fewer adjournments and more accurate and reliable listings of Final Hearings).
- Qualitative exploration identified the following reasons for delays:
 - ❑ local authority mismanaging disclosure and filing of key documentation;
 - ❑ changes in local authority social work staff;
 - ❑ delays in disclosure of police and medical information;
 - ❑ lack of a guardian report;
 - ❑ delays in obtaining expert evidence;
 - ❑ complex issues (such as drug and alcohol rehabilitation) taking longer to address and test in the community than the PLO allows for;
 - ❑ late joining of parties.
- Difficulties with obtaining expert evidence focused on (a) expert availability, (b) poorly drafted instructions and (c) timetabling for filing reports. In addition, differing views on the appropriateness of instructing experts at the First Appointment needed to be addressed.
- Some dates set for expert evidence might be unrealistic but on the basis of the quantitative results it would be inaccurate to suggest that all reports were delayed or resulted in delay in cases.

Outcomes of the PLO

- All respondents endorsed the aim of the PLO (focusing on a clear structure, more efficient use of court time, and avoiding delay for children).
- Overall, most of the respondents in our qualitative study suggested that, **when implemented properly**, the PLO might:
 - ❑ enable an early focus on the Key Issues;
 - ❑ clarify expectations for all parties;
 - ❑ support earlier identification of potential kinship carers;
 - ❑ reduce delay caused by late joining of parties;
 - ❑ assist the judiciary in promoting active case management.
- However, this research identified ongoing dissatisfaction and disquiet regarding aspects of the pre-proceedings process. A critical review of this process with regard to the following issues is urgently recommended:
 - ❑ parents' capacity to access and make use of specialist childcare lawyers;
 - ❑ the capacity of this process to prevent cases coming to court;

- ❑ cases coming to courts where all parties are prepared and represented;
 - ❑ the timing of the Letter before Proceedings;
 - ❑ the practice of ‘frontloading’ work on cases causing delays to cases coming to court.
- In particular, this study noted serious concerns raised by respondents regarding the welfare, voice and human rights of the child during the pre-proceedings stage. A critical review of this process should include a re-appraisal of the question of independent welfare and legal representation of children at the point at which the Letter before Proceedings is issued. It should also consider the timing of appointment of the guardian. In particular, concerns were raised about:
 - ❑ frequent lack of guardian input at the First Appointment;
 - ❑ poor compliance/understanding/completion of the document ‘Timetable for the Child’ and little evidence that the Timetable for the Child took precedence in the court process.

Key obstacles to implementation

- Practitioners identified a need for more training and notice prior to implementation.
- PLO paperwork was seen as unwieldy and in need of revision.
- Variability in the practice of implementing the PLO across the courts went beyond flexibility for the needs of the case. This needs to be addressed.
- Lack of judicial continuity in the FPCs was likely to undermine proactive case management.

Lack of the timely input of key stakeholders (for a range of reasons) was likely to present a significant barrier to implementation. These reasons included perceived lack of available experts and expert evidence, difficulties around disclosure of medical records, information about immigration status, and police data, the frequent absence of children’s guardians at the start of proceedings (in England) and poor local authority compliance overall.

Recommendations for further research

The limitations to this study are outlined in Section 3, and we recommend that a more comprehensive evaluation of the PLO be carried out in the future. This should take place across a range of settings (not just in initiative areas), with a realistic timeframe for the collection of quantitative data to allow for random sampling.

The impact of the PLO on local authority practice (across a range of local authority departments but in particular Children’s Services) should be examined. Our study revealed that compliance with the PLO varied across local authorities, and poor compliance was a key cause of delay to s.31 proceedings. The reasons underlying non-compliance are not understood at present, nor how these might be addressed. We therefore recommend that a process evaluation of local authority practice with regard to the PLO and the statutory guidance be commissioned across a range of settings.

Finally, our study revealed a range of serious concerns regarding the pre-proceedings process. These included (but were not limited to) the efficacy of the process in preventing cases coming to court; duration of the pre-proceedings process and potential delays in issuing proceedings as a result; access to and take-up of effective legal advice for both parents and children; and the welfare, voice and human rights of the child during the pre-proceedings process. We urgently recommend an evaluation of the pre-proceedings process that includes greater access to and input from local authorities.

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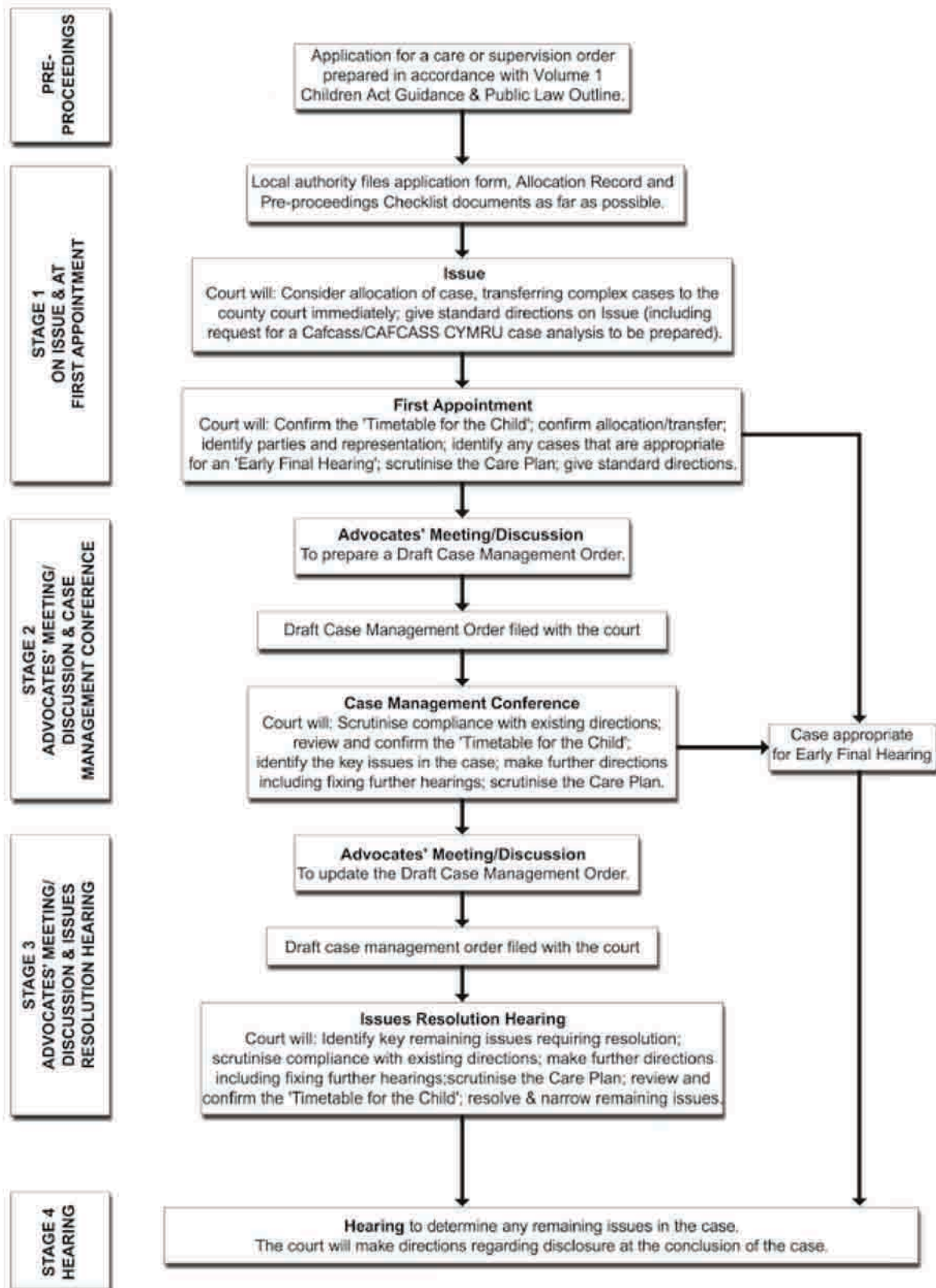
Appendix 1 The Public Law Outline and court proceedings flowchart (MOJ, 2008)

CMC = Case Management Conference; FA = First Appointment; IRH = Issues Resolution Hearing;
LA = local authority; OS = Official Solicitor.

PRE-PROCEEDINGS	
PRE-PROCEEDINGS CHECKLIST	
The Checklist Documents:	
Documents to be disclosed from the LA's files: <ul style="list-style-type: none"> ● Previous court orders & judgments/reasons ● Any relevant Assessment Materials <ul style="list-style-type: none"> □ Initial and core assessments □ Section 7 & 37 reports □ Relatives & friends materials (e.g. a genogram) ● Other relevant Reports & Records <ul style="list-style-type: none"> □ Single, joint or inter-agency materials (e.g. health & education/Home Office & Immigration documents) □ records of discussions with the family □ Key LA minutes & records for the child (including Strategy Discussion Record) 	<ul style="list-style-type: none"> ● Pre-existing care plans (e.g. child in need plan, looked after child plan & child protection plan) ● Social Work Chronology ● Letters Before Proceedings Documents to be prepared for the proceedings: <ul style="list-style-type: none"> ● Schedule of Proposed Findings ● Initial Social Work Statement ● Care Plan ● Allocation Record & Timetable for the Child
STAGE 1 - ISSUE AND THE FIRST APPOINTMENT	
ISSUE	FIRST APPOINTMENT
On day 1 and by day 3	By day 6
Objectives: To ensure compliance with pre-proceedings checklist; to allocate proceedings; to obtain the information necessary for initial case management at the FA	Objectives: To confirm allocation; to give initial case management directions
On Day 1 <ul style="list-style-type: none"> ● LA files: <ul style="list-style-type: none"> □ Application Form □ Supplementary Form PLO1 □ Checklist documents ● Court officer issues application ● Court nominates case manager(s) ● Court gives standard directions including: <ul style="list-style-type: none"> □ Pre-proceedings checklist compliance □ Allocate and/or transfer □ Appoint children's guardian □ Appoint solicitor for the child □ Case Analysis for FA □ Invite OS to act for protected persons (non subject children & incapacitated adults) □ Lists FA by Day 6 □ Make arrangements for contested hearing (if necessary) By Day 3 <ul style="list-style-type: none"> ● Allocation of a children's guardian expected ● LA serves the Application Form, Supplementary Form PLO1 and the Checklist Documents on parties 	<ul style="list-style-type: none"> ● Parties notify LA & court of need for a contested hearing ● Court makes arrangements for a contested hearing ● Initial case management by Court including: <ul style="list-style-type: none"> □ Confirm Timetable for the Child □ Confirm allocation or transfer □ Identify additional parties & representation (including allocation of children's guardian) □ Identify "Early Final Hearing" cases □ Scrutinise Care Plan ● Court gives standard directions on FA including: <ul style="list-style-type: none"> □ Case Analysis and Recommendations for Stages 2 & 3 □ LA Case Summary □ Other Parties' Case Summaries □ Parties' initial witness statements □ For the Advocates' Meeting □ List CMC or (if appropriate) an Early Final Hearing □ Upon transfer

STAGE 2 - CASE MANAGEMENT CONFERENCE	
ADVOCATES' MEETING	CMC
No later than 2 days before CMC	No later than day 45
Objectives: To prepare the Draft Case Management Order; to identify experts and draft questions for them	Objectives: To identify issue(s); to give full case management directions
<ul style="list-style-type: none"> ● Consider all other parties' Case Summaries and Case Analysis and Recommendations ● Identify proposed experts and draft questions in accordance with Experts Practice Direction ● Draft Case Management Order ● Notify court of need for a contested hearing ● File Draft Case Management Order with the case manager/case management judge by 11am one working day before the CMC 	<ul style="list-style-type: none"> ● Detailed case management by the court <ul style="list-style-type: none"> □ Scrutinise compliance with directions □ Confirm Timetable for the Child □ Identify key issue(s) □ Confirm allocation or transfer □ Consider case management directions in the Draft Case Management Order □ Scrutinise Care Plan □ Check compliance with Experts Practice Direction ● Court issues Case Management Order ● Court lists IRH and, where necessary, a warned period for Final Hearing
STAGE 3 - ISSUES RESOLUTION HEARING	
ADVOCATES' MEETING	IRH
Between 2 and 7 days before the IRH	Between 16 & 25 weeks
Objective: To prepare or update the Draft Case Management Order	Objectives: To resolve and narrow issue(s); to identify any remaining key issues
<ul style="list-style-type: none"> ● Consider all other parties' Case Summaries and Case Analysis and Recommendations ● Draft Case Management Order ● Notify court of need for a contested hearing/ time for oral evidence to be given ● File Draft Case Management Order with the case manager/case management judge by 11am one working day before the IRH 	<ul style="list-style-type: none"> ● Identification by the court of the key issue(s) (if any) to be determined ● Final case management by the court: <ul style="list-style-type: none"> □ Scrutinise compliance with directions □ Consider case management directions in the Draft Case Management Order □ Scrutinise Care Plan □ Give directions for Hearing documents: □ Threshold agreement or facts/issues remaining to be determined □ Final Evidence & Care Plan □ Case Analysis and Recommendations □ Witness templates □ Skeleton arguments □ Judicial reading list/reading time/judgment writing time □ Time estimate □ Bundles Practice Direction compliance □ List or confirm Hearing ● Court issues Case Management Order
STAGE 4 HEARING	
In accordance with the Timetable for the Child	
Objective: To determine remaining issues	
<ul style="list-style-type: none"> ● All file & serve updated case management documents & bundle ● Draft final order(s) in approved form 	<ul style="list-style-type: none"> ● Judgment/Reasons ● Disclose documents as required after hearing

Flowchart: Court Proceedings - Public Law Outline



Appendix 2 Glossary

The following glossary of terms used in this report is an abridged version of the glossary included as part of *The Public Law Outline. Guide to Case Management in Public Law Proceedings* (MOJ, 2008).

Advocate means a person exercising a right of audience as a representative of, or on behalf of, a party;

Allocation Record and the Timetable for the Child means a document containing:

- a) the Local Authority's proposal for allocation;
- b) the Local Authority's proposed Timetable for the Child;
- c) the court's allocation decisions and reasons; and
- d) the court's approved Timetable for the Child.

The Bundles Practice Direction means the Practice Direction Family Proceedings: Court Bundles (Universal Practice to be Applied in all Courts other than Family Proceedings Court) of 27 July 2006.

Case Analysis and Recommendations means a written or oral outline of the case from the child's perspective prepared by the children's guardian or other officer of the service or Welsh family proceedings officer at different stages of the proceedings requested by the court, to provide:

- a) an analysis of the issues that need to be resolved in the case including:
 - i. any harm or risk of harm;
 - ii. the child's own views;
 - iii. the family context including advice relating to ethnicity, language, religion and culture of the child and other significant persons;
 - iv. the local authority work and proposed Care Plan;
 - v. advice about the court process including the Timetable for the Child; and
 - vi. identification of work that remains to be done for the child in the short and longer term; and
- b) recommendations for outcomes, in order to safeguard and promote the best interests of the child in the proceedings.

Case Management Record means the court's filing system for the case which includes the documents referred to at paragraph 3.7.

Care Plan means a 'section 31A plan' referred to in Section 31A of the 1989 Act.

Core Assessment means the assessment undertaken by the Local Authority in accordance with The Framework for the Assessment of Children in Need and their Families (Department of Health, 2000).

Draft Case Management Order means the draft case management document in the form of an order set out at Annex C to the Practice Direction.

Initial Assessment means the assessment undertaken by the Local Authority in accordance with The Framework for the Assessment of Children in Need and their Families (Department of Health, 2000).

Initial Social Work Statement means a statement prepared by the local authority strictly limited to the following evidence:

- a) the precipitating incident(s) and background circumstances relevant to the grounds and reasons for making the application including a brief description of any referral and assessment processes that have already occurred;
- b) any facts and matters that are within the social worker's personal knowledge limited to the findings sought by the local authority;
- c) any emergency steps and previous court orders that are relevant to the application;
- d) any decisions made by the local authority that are relevant to the application;
- e) information relevant to the ethnicity, language, religion, culture, gender and vulnerability of the child and other significant persons in the form of a 'family profile' together with a narrative description and details of the social care and other services that are relevant to the same;
- f) where the local authority is applying for an interim order: the local authority's initial proposals for the child (which are also to be set out in the Care Plan) including placement, contact with parents and other significant persons and the social care services that are proposed;
- g) the local authority's initial proposals for the further assessment of the parties during the proceedings including twin track / concurrent planning (where more than one permanence option for the child is being explored by the local authority);

Letter Before Proceedings means any letter from the local authority containing written notification to the parents and others with parental responsibility for the child of the local authority's plan to apply to court for a care or supervision order

Local Authority Case Summary means a summary for each case management hearing in the form set out at Annex B to the Practice Direction which must include the following information:

- a) the applications which have been issued in the current proceedings;
- b) any previous proceedings in relation to the child[ren] and any orders made in previous proceedings or in the current proceedings to which the child[ren] is/are subject;
- c) the present living arrangements for the child[ren] and arrangements for contact between the child[ren] and parent(s) or other relevant adult or child;
- d) a very brief summary of the incident(s) or circumstances giving rise to the application and of the background to the proceedings;

- e) a summary of any concerns the local authority may have about the mental capacity of an adult to care for the child or the capacity of the adult to prepare for the proceedings;
- f) the Key Issues in the case;
- g) any agreements that there are as to the Key Issues or the findings of fact sought by the local authority;
- h) whether an application for placement for adoption is among the range of options that will have to be considered;
- i) any current or proposed proceedings (e.g. criminal proceedings, other family proceedings, disciplinary, immigration or mental capacity/health determinations) which are relevant to the determination of the application(s);
- j) the issues and directions which the court will need to consider at the Case Management Conference/Issues Resolution Hearing, including any interim orders sought;
- k) any steps which have not been taken or directions not complied with, an explanation of the reasons and the effect, if any, on the Timetable for the Child;
- l) a recommended reading list and suggested reading time;
- m) any additional information relevant to the Timetable for the Child or for the conduct of the hearing or the proceedings;
- n) the contact details of all advocates, their solicitors (where appropriate) and other significant persons e.g. the local authority key worker or team manager and the children's guardian.

Pre-proceedings Checklist means the checklist of documents set out in the Public Law Outline.

Schedule of Proposed Findings means the schedule of findings of fact prepared by the Local Authority sufficient to satisfy the threshold criteria under Section 31(2) of the 1989 Act and to inform the Care Plan.

Section 7 report means any report under Section 7 of the 1989 Act.

Section 37 report means any report by the local authority to the court as a result of a direction under Section 37 of the 1989 Act.

Social Work Chronology means a schedule containing:

- a) a succinct summary of the significant dates and events in the child's life in chronological order – a running record to be updated during the proceedings;
- b) information under the following headings:
 - i. serial number;
 - ii. date;
 - iii. event-detail;
 - iv. witness or document reference (where applicable).

Standard directions on Issue and on First Appointment includes the directions set out in the Public Law Outline, Stage 1.

Supplementary Form PLO1 means the form set out at Annex A to the Practice Direction which is to be filed with the application form and then used as the Index to the Court's Case Management Record.

Timetable for the Child means the timetable set by the court which is appropriate for the child who is the subject of the proceedings and forms part of the Allocation Record. Further guidance from the Practice Direction: The Timetable for the Child will be set by the court to take account of all significant steps in the child's life that are likely to take place during the proceedings. Those steps include not only legal steps but also social, care, health and education steps.

Examples of the dates the court will record and take into account when setting the Timetable for the Child are the dates of:

- (1) any formal review by the local authority of the case of a looked-after child (within the meaning of Section 22(1) of the 1989 Act);
- (2) the child taking up a place at a new school;
- (3) any review by the local authority of any statement of the child's special educational needs;
- (4) an assessment by a paediatrician or other specialist;
- (5) the outcome of any review of local authority plans for the child, for example, any plans for permanence through adoption, Special Guardianship or placement with parents or relatives;
- (6) a change or proposed change of the child's placement.

Ministry of Justice Research Series 10/09

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ISBN 978 1 84099 297 7

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Produced by the Ministry of Justice

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